



# SENTENCING IN WISCONSIN

## Snapshots of Information on Wisconsin Sentencing

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### Where Judges Place on Sentencing Guidelines Grids: February 2003-June 2004

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2001 Act 109, which implemented Truth in Sentencing II in February 2003, also implemented temporary advisory sentencing guidelines and companion worksheets for 11 prominent felony offenses. These worksheets and their companion notes can be accessed at <http://wsc.wi.gov/section.asp?linkid=4&locid=10>. The Wisconsin Sentencing Commission formed by that legislation is tasked with deciding to adopt the guidelines as permanent, amend them, or promulgate entirely new guidelines. As a first step, the Commission is evaluating the data provided on the current worksheets that circuit courts have returned to date. The Commission is also actively seeking feedback and input from judges, prosecutors, and other important participants in the sentencing process.

Wisconsin case law explicitly requires reasoned sentencing, that is, that the judge at sentencing explain the reason(s) for the sentence and how the sentence will serve the goals intended. The current sentencing guidelines worksheets, required to be completed for the state's eleven most frequent offenses, list common factors regarding offense severity and offender risk and ask the judge to indicate which of the factors were considered most relevant to the sentencing decision. Then, based on the judge's determination of severity and risk, the judge will turn to a grid provided to recommend the appropriate sentence for the offense and offender.

On the worksheet, judges are prompted to examine sentencing decisions along two axes: the severity of the offense committed (Offense Severity) and the risk to public safety posed by the offender based on criminal history and other factors (Risk Assessment). After examining the factors pertaining to each, judges are

asked to place the offense in one of three categories along both axes: mitigated, intermediate, or aggravated offense severity, and lesser, medium, or high risk assessment. Based on those two ratings, sentences are then placed on a nine-cell grid, with offense severity as the vertical axis and risk assessment as the horizontal axis, which provides suggested ranges of probation or incarceration time based on the axis placements.

Table 1 lists the percentages of worksheets placed in each grid box for the 835 worksheets returned to the Commission by June 1, 2004<sup>1</sup>.

Table 1-Percentage Breakdown of Grid Placements

	Low	Medium	High	Total
Mitigated	12.64%	10.62%	4.42%	27.69%
Intermediate	14.54%	27.18%	13.40%	55.12%
Aggravated	6.07%	6.45%	4.68%	17.19%
Total	33.25%	44.25%	22.50%	100%

These data indicate that, at least in cases for which worksheets are submitted, judges in Wisconsin hand down mid-range sentences for the most frequent offenses; furthermore, when they deviate from

mid-range, they concentrate slightly more on factors that may mitigate the sentence instead of aggravating it. Since the suggested sentence ranges of the more mitigated boxes include probation for most guideline offenses, this trend is consistent with the Wisconsin Supreme Court mandate in *State v. Gallion* that judges consider probation as the first punitive alternative.

<sup>1</sup> Based on comparisons with Department of Corrections data, the Commission estimates the rate of return for the worksheets to date to be about 40% of all guideline offense cases. Although this data set is sufficiently large to generate meaningful results, it is not a randomly selected sample or the total universe of cases from the period. Therefore, any statistical conclusions are suggestive rather than definitive at this time.